EXHIBIT I

Reply Brief of Plaintiff-Respondent,
Clarendon Nat'l Ins. Co. v. Atlantic Risk Mgt., Inc., 2008 WL 8162171

2008 WL 8162171 (N.Y.A.D. 1 Dept.) (Appellate Brief)
Supreme Court, Appellate Division, First Department, New York.

CLARENDON NATIONAL INSURANCE COMPANY, Plaintiff-Respondent,

v.

ATLANTIC RISK MANAGEMENT, INC., Defendant-Appellant.

No. 5303.
December 17, 2008.

Reply Brief for Defendant-Appellant

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1 *Preliminary Statement

Defendant-appellant Atlantic Risk Management, Inc. ("ARM"), submits this Reply brief in further support of its appeal from several decisions of the Trial Court which have consistently denied ARM the discovery it needs to properly and fully defend itself in this action.

As discussed further below, ARM respectfully submits that plaintiff-respondent has failed to cast any doubt on ARM's contention that the Trial Court incorrectly and repeatedly misapplied relevant law and misapprehended material facts in determining that ARM is not entitled to complete disclosure from plaintiff-respondent Clarendon National Insurance Company ("Clarendon.")

Discovery At Issue

For the Court's convenience, we recreate here this chart from ARM's opening brief, which summarizes the discovery and related decisions at issue in this appeal:

Defendants' discovery	***Motion Date***	***Trial Court Decision***
First Set (R-80-93),[1] and Second Set (R-277-290)	May 22, 2007 (R-191-380)	December 6, 2007 and December 19, 2007 (R-6-7; and R-13-15)
Third Set (R-485-495), and Fourth Set (R-573-582)	January 17, 2008 (R-427-661)	July 14, 2008 (R-28-30)
Fifth Set (R-787-797)	**March 25, 2008 (R-764-814)**	**August 5, 2008 (R-21-22)**

3 *Argument

ARM IS ENTITLED TO THE DISCOVERY SOUGHT IN THIS ACTION

As discussed in greater detail in the opening brief submitted by ARM, ARM was third-party claims administrator ("PA") for Clarendon. As such, it performed Clarendon's claims administration: it reviewed coverage, drafted reservation of rights letters and proposed denials of coverage that were sent to Clarendon for approval. Although ARM could issue a reservation of rights letter on its own, ARM needed Clarendon's specific approval to deny coverage.

ARM respectfully submits that it should be allowed to test, via discovery, Clarendon's claim that although the agreement between itself and ARM specifically stated that Clarendon retained sole authority to deny coverage, that authority was illusory and Clarendon virtually rubber-stamped the "recommendations" made by ARM and its other TPA's.

In its brief in opposition to ARM's appeal (and, in fact, in its refusal to respond to ARM's discovery demands), Clarendon constantly sets up "straw men" arguments by claiming that ARM seeks information about how other TPAs, in other states, handled claims for Clarendon and, perhaps, for other insurers. However, that is not what ARM seeks in the

instant discovery. Instead, ARM ***4** seeks specific information about *Clarendon* and its true and correct claims handling practices.

As discussed in ARM's opening brief on appeal, it is axiomatic that a defendant is entitled to discovery as to the two key elements which make up any plaintiff's case: liability and damages. *See, e.g.,* CPLR 3101(a), "There shall be full disclosure of all matter material and necessary in the...defense of an action, regardless of the burden of proof." This disclosure provision is to be "liberally construed" with the test of whether production is warranted being whether the material sought is "useful." The information requested need not be shown to be "indispensable" but rather must only be "needful" and sufficiently related to the subject matter of the action to be "reasonable." *Allen v. Crowell-Collier Publishing Co.,* 21 N.Y.2d 403, 288 N.Y.S 2d 449 (1968); *Cilone v. Wilson Safety Products, Inc.,* 229 A.D.2d 372, 644 N.Y.S.2d 562 (2d Dep't 1996.)

The words "material and necessary" are to be interpreted liberally and mandate disclosure of any facts bearing on the dispute between the parties. *Marten v. Eden Park Health Services. Inc.*, 250 A.D.2d 44, 680 N.Y.S.2d 750 (3d Dep't 1998.) Even if a court feels that there is no showing of willfulness or bad faith on behalf of plaintiff in failing to provide defendant with discovery, *Reade v Dickson* 150 A.D.2d 543 (2d Dep't 1989), there should be no hesitation in compelling ***5** Clarendon to provide ARM with responses to the discovery demands in a timely fashion.

The discovery ARM seeks in this action goes to the heart of Clarendon's claims in this very action. It is black letter law that discovery into "other cases" is relevant and vital in establishing a parties' actual pattern and practice of behavior. *Dias v. Consolidated Edison of New York*, 116 A.D.2d 453 (1st Dep't 1986). It is revealing that Clarendon's opposition makes no mention of *Dias*.

The cases that Clarendon cites for the proposition that discovery into "other cases" is unwarranted are wholly inapposite. In *Bustos v. Lenox Hill Hospital,* 29 A.D.3d 424, 816 N.Y.S.2d 24 (1st Dep't 2006), the Court denied plaintiffs application to conduct an inspection of the delivery room at defendant hospital that was the site of the alleged malpractice that was at issue. First, *Bustos* dealt with an inspection of a room, not the document production and interrogatory responses that are in dispute here. Moreover, a key reason why an inspection was denied was because the Court identified an alternate method of discovery (review of floor plans rather than an inspection), that would be even "more reliable as to conditions at the relevant time."

Clarendon also cites *Evans v. Lerch*, 182 Misc. 2d 887, 700 N.Y.S.2d 400 (S. Ct. N.Y. Co. 1999), for the proposition that "information regarding third-party [insurance] claims is not discoverable." However, once one looks at *why* ***6** "information regarding third-party claims" was been denied in cases like *Evans,* it becomes crystal clear that that case, its progeny, and cases cited therein for support, have nothing to do with the instant dispute. In *Evans,* plaintiff sought copies of defendant's insurance policies as well as claims made against those policies. The Court held that plaintiff was not entitled to information about claims made against those policies.[2] The only case cited by *Evans* is *Weiner v. Lenox Hill Hospital*, 164 Misc. 2d 759, 625 N.Y.S.2d 818 (S. Ct. N.Y. Co. 1995). There, a motion for defendant's insurance policies and claims made against such policies was made pursuant to CPLR 3101(f). CPLR 3101 (f) provides that a claimant can recover information about a defendants' insurance coverage "to accelerate settlement of claims." *Russo v. Rochford,* 123 Misc. 2d 55, 472 N.Y.S. 2d 954 (S. Ct. Queens Co. 1984). In *Weiner*. the reason why plaintiff sought information about claims made under defendant's policy was to see if there was sufficient coverage available to settle the subject claim.

In accord is another case cited by Clarendon, *Bolton v. Weil, Gotshal & Manges*. 14 Misc. 3d 1220, 2005 Slip Op. 52329 (S. Ct. N.Y. Co. 2005). In *Bolton,* plaintiff moved -- again pursuant to CPLR sec. 3101 (f) -- for information about insurance policies that might provide coverage for the subject loss and claims made against those policies.

***7** Here, ARM is not seeking information about other coverage determinations pursuant to CPLR sec. 3101(f). Moreover, ARM is not seeking this information to determine if there is coverage available to Clarendon. Instead, ARM seeks information about claims made by Clarendon in *this* case. *Evans* and *Bolton* are, therefore, irrelevant.

Finally, Clarendon cites *State Farm Mutual Automobile Insurance Co. v. Campbell.* 538 U.S. 408, 123 S. Ct. 1513 (2003), for the proposition that "evidence of an insurer's alleged misconduct in unrelated cases was irrelevant." However, *State Farm* involved an analysis of whether a $145 million punitive damage award was warranted in the face of a $1 million compensatory damage award. Plaintiffs there argued that such a large award was warranted due to defendants' alleged misconduct in other cases in other jurisdictions. The Court denied that argument, reasoning that the defendant-insurer's supposed misconduct in widely disparate fora, and in other states, was absolutely irrelevant to calculating the punitive damages that one particular plaintiff was entitled to.

Here, in contrast there is no issue of punitive damages. *State Farm,* therefore, is wholly distinguishable from the case at bar.

Clarendon also objects to the scope of ARM's demands, suggesting that ARM seeks details about virtually every recommendation made to it by virtually every TPA it utilized. However, Clarendon also acknowledges that the relevant ***8** files number in the hundreds (an admittedly large number), out of thousands. Thus, Clarendon recognizes that ARM is seeking information about a discrete sub-set of files.

Clarendon also misstates the reasons why ARM seeks information "about" other TPAs. ARM seeks information about *Clarendon,* not about the other TPA's. The actions Clarendon took in reviewing coverage issues submitted to it by any TPA is probative of the way Clarendon oversaw coverage issues in general and the Pittenger matter in particular. As set forth in the Kieslich affidavit (R-657), Clarendon drafted the Claims Administration Agreement ("CAA"), that governed the relationship between Clarendon and ARM that dictated what ARM could, and could not do, vis-a-vis coverage and claims administration. The CAA between ARM and Clarendon was substantially similar (if not identical), to-the agreement governing Clarendon's relationship with other TPAs. (R-658). As such, what Clarendon "did" vis-a-vis its coverage analysis in cases submitted to it by other TPAs is highly probative as to Clarendon's true claims handling practices and procedures.

By demanding that all proposed disclaimers be sent to it, by retaining the ability to seek out coverage opinions and by retaining final authorization to approve denials of coverage, Clarendon is predominantly -- if not wholly -- responsible for the erroneous disclaimer. Because Clarendon retained for itself ***9** the sole right to deny coverage, Clarendon cannot foist sole and exclusive responsibility onto ARM by claiming that ARM "did all the analysis" and Clarendon violated its own agreement and merely "rubber stamped" ARM's decisions. Since Clarendon has acknowledged that it could have taken any number of steps following receipt of a coverage recommendation from ARM, it is disingenuous at best for Clarendon to, instead, argue that when it received ARM's coverage recommendation vis-a-vis the Pittenger, it, in essence, had "no choice" but to blindly follow ARM's lead.

Here, like in *Austin v. Calhoon,* 51 A.D. 2d 958 (1st Dep't 1976) and *Greater New York Mutual Insurance Company v. Lancer Insurance Company,* 203 A.D.2d 515, 611 N.Y.S.2d 35 (2d Dep't 1994), ARM seeks discovery into Clarendon's actual claims handling practices, the way Clarendon related to its TPA's and the depth of Clarendon's involvement in coverage decisions. The true nature of Clarendon's claims handling with its TPA's is thus extremely relevant to Clarendon's "ownership" of the decision to deny coverage pertaining to the Pittenger claim. The Trial Court misapprehended a key fact when it concluded that these discovery issues were not before it (R-598-560).

ARM further submits that the Trial Court's decisions should be reversed because ARM clearly demonstrated the Trial Court purported to deny ARM's discovery without ever reviewing much of the discovery sought. ARM's prior ***10** discovery motion of May 22, 2007 did not address much of the discovery that was to be put before the Court as per

the agreed-upon stipulation. (R-594-597) This includes the Third Set of Demands (R-485-495), and the Fourth Set of Demands (R-573-582) The reason for this is that these demands had not been promulgated at the time of the May 22, 2007 cross-motion. In fact, the Fourth Set of demands flowed from the Stinson deposition (R-519-572), that was the subject of the August 29, 2007 Order.

Simply put, the Trial Court rejected ARM's discovery without reviewing it and without considering the reasons why such discovery was relevant and necessary. ARM respectfully submits that such a abrupt and perfunctory denial of discovery cannot be proper.

Clarendon also suggests that ARM's continuing demand that it comply with its discovery requirements (rather than immediately agreeing to fly off to Florida for an open-ended "inspection"), means that ARM is making these demands to, somehow, bludgeon Clarendon into submission. Nothing could be further from the truth. As the plaintiff herein, Clarendon has the burden of proof of establishing its case, including its claims that it "relied" virtually exclusively on the advise offered and information provided by its TPAs. Therefore, Clarendon must respond to discovery relevant to its burden of proof in this case. At a minimum, ARM must be afforded the opportunity to conduct its own review of such files.

***11** First, plaintiff notes that its relationship with ARM was based upon a contract, the Claims Administration Agreement. However, as noted above, the agreement between Clarendon and ARM was substantially similar, if not identical, to the agreements that govern Clarendon's dealings with its other TPA's, including a TPA's rights and obligations vis-a-vis coverage.[3] (R-656-661). Consequently, the way that Clarendon interacted with its other TPA's is indicative of the true scope and breath of Clarendon's involvement in coverage decisions.

It bears mention, yet again, that Clarendon continues to misstate the discovery ARM seeks. Plaintiff alleges that ARM asks for information about how other TPA's handle claims. Clarendon then claims that it would be fundamentally unfair to compare the actions of Clarendon and ARM with the actions of "out-of-state TPAs" or insurers. However, ARM does no such thing. Rather, ARM seeks information about how *Clarendon* reviews coverage issues. The way Clarendon made coverage determinations, even if submitted by other TPA's (whose duties towards plaintiff was governed under the same, or similar, claims handling agreement as affected ARM), is an accurate and complete depiction of how Clarendon really handles and reviews coverage issues.

***12** Clarendon goes on to argue that claim determinations that may be perfectly proper in one state are not necessarily proper in "another state." However, ARM is not seeking discovery to determine whether the underlying coverage decision Clarendon made vis-a-vis the Pittenger claim would have been correct if made in some other jurisdiction. In point of fact, the *substance* of Clarendon's coverage decisions is of secondary import. What is crucial to ARM's defense is the *process* by which Clarendon made its coverage decisions. As indicated above, Clarendon seeks to have ARM indemnify it for a coverage decision that Clarendon made. Thus, the mechanics by which Clarendon made its coverage determinations is relevant to the case at bar.

The cases that Clarendon cites do not lead to a contrary result. Plaintiff points (again), to *State Farm, supra*, for the proposition that comparing actions of parties with individuals or entities in other states could constitute a "due process violation." However, *State Farm* has no bearing on the case at hand. There, the underlying court allowed evidence of State Farm's actions in other states for the sole and express purpose of assessing the correct measure of punitive damages against State Farm. The Supreme Court held that consideration of such evidence led, in part, to a punitive damage award that was 145 times greater than the compensatory damages award. It was that discrepancy that led to a potential due process violation.

***13** Here, ARM is not seeking to impose punitive damages on Clarendon nor is the disputed discovery designed to support any such award. Similarly, the requested discovery is not designed to determine if Clarendon did something

inappropriate in the Pittenger matter that would have been correct in some other jurisdiction. Rather, the purpose of the requested discovery is to determine the truth about Clarendon's claims handling and coverage analysis. Again, it must be emphasized that Clarendon has never refuted ARM's submissions that the agreement between ARM and Clarendon was virtually identical to the agreement between Clarendon and the other TPAs. (R-658). Thus, the true nature of Clarendon's dealings with the other TPAs is relevant to what was expected of ARM vis-a-vis the Pittenger claim.

Case law demonstrates that ARM is entitled to the discovery it seeks to determine the true nature of Clarendon's practices. *See e.g., Belco Petroleum Corp. v. AIG Oil Rig. Inc.*, 179 A.D.2d 516 (1st Dep't 1992). There, plaintiff alleged that defendant had a pattern and practice of attempting to rescind policies in the face of substantial claims. Although the Court denied plaintiff's discovery for information about every suit brought against defendant, the court apparently allowed discovery into defendant's general actions vis-a-vis policy rescission, including rescission of other policies beyond plaintiff's. Similarly, in *Barkley v. Olympia Mortgage Company*, 2007 WL 656250 (E.D.N.Y. 2/27/07), the Court ***14** allowed plaintiffs discovery that exceeded the individual real estate transactions that plaintiffs themselves were involved with so as to ascertain defendant's true and correct practices.[4] The Court is also referred to the cases cited in ARM's opening brief, specifically *Goldberg v. Blue Cross of Northeastern N.Y.*, 81 A.D.2d 995 (3d Dep't 1981); *Greater New York Mutual Insurance Company v. Lancer Insurance Company, supra: Austin v. Calhoon,* 51 A.D. 2d 958 (1st Dep't 1976); *Rodolitz v. Beneficial National Life Insurance Company,* 41 A.D. 2d 707, 341 N.Y.S.2d 278 (1st Dep't 1973); *Independent Petrochemical Corp. v. Aetna Casualty & Surety Co.,* 117 F.R.D. 292 (D.D.C. 1987); and *Colonial Life & Accident Insurance Co. v. Superior Court*. 31 Cal. 3d 785 (1982).[5]

Clarendon also asserts that ARM is looking for "dirt" about Clarendon or complaints that other TPAs may have with Clarendon. This is untrue. As asserted in ARM's submissions to date, ARM is entitled to the truth about Clarendon's claims handling and coverage analysis procedures. This information can be obtained through Clarendon (via the sought after discovery), and through the entities that Clarendon interacts with, the other TPAs.

***15** The information sought by ARM is material and necessary to the defense of this action. As such, it would cause great prejudice to ARM, if at a minimum, Clarendon is not compelled to disclose the requested information.

Finally, Clarendon suggests that ARM was procedurally incorrect in seeking to compel responses to the third and fourth sets of discovery in the context of ARM's motion for renewal and reargument of the Trial Court's decision denying complete responses to the first and second set of discovery. Likewise, Clarendon contends that ARM was procedurally incorrect in seeking to. compel responses to the fifth set of discovery as part of ARM's motion to vacate the note of Issue.

Both of these arguments must be rejected. Such joint consideration would be a economic use of judicial resources as it would allow all the then-pending issues to be resolved at once rather than piecemeal. In their opening brief, ARM cited to *Metropolitan Marking Corp. v. Basso*, 118 A.D.2d 835, 500 N.Y.S.2d 319 (2d Dep't 1986). In its opposition, Clarendon discussed only so much of *Metropolitan Marking*, which denied a movant's motion for renewal. However, Clarendon completely ignores the actual reason why ARM cited to *Metropolitan Marking*. Specifically, in that case the movant made two motions together: one for renewal and one to add a new party, two completely separate forms of relief. The Court there *granted* the motion to add a party which was apparently made "jointly" with a motion to renew a prior motion to compel discovery. In other words, ***16** *Metropolitan Marking does* stand for the position that a motion for renewal/reargument can be made jointly with an application seeking some other form of relief. Here, ARM moved for renewal/reargument of the Trial Court's denial of discovery vis-a-vis the first and second sets of discovery and "jointly" made a "new" motion to compel responses to the third and fourth sets of discovery.

Moreover, CPLR Sec. 2221 provides, on its face, that a motion to reargue can be made simultaneously and jointly with a motion to renew. Just as joining these two separate and distinct "reconsideration" motions saves judicial resources, so, too, does combining the above referenced discovery motions (motion for reconsideration concerning the first and second sets and "initial" motion to compel regarding the third and fourth sets), conserve scarce judicial resources.

Regarding the fifth set of discovery demands, the Trial Court denied that motion to compel (which was made along with the motion to strike the note of issue), without explanation, stating only that the moving papers failed to "establish the specific relevance" of those demands. However, as discussed previously, the specific discovery demands at issue in the fifth set of discovery seek Clarendon's coverage counsel's files regarding matters where he provided Clarendon with coverage analysis. The relevance of these demands is clear.

As indicated above, Clarendon's suit against ARM is predicated upon the theory that Clarendon, invariably and solely relied upon ARM to do all the ***17** research and analysis that was necessary before Clarendon decided whether or not to extend coverage to an insured. However, Clarendon, and its coverage counsel have testified to the contrary. They have confirmed that Clarendon took an active role in reviewing whether coverage was available to a Clarendon insured. As such, ARM is entitled to discovery to actually determine what was Clarendon's true and precise claims handling practices. Was it to "rubber stamp" a TPA's recommendation (as Clarendon claims in seeking to shift all responsibility onto ARM for the underlying Pittenger matter), or does Clarendon bear its own share of the burden?

The balance of the items at issue in the fifth set of discovery are, it is respectfully submitted, equally relevant. These have to do with Clarendon's actual losses. If the underlying Pittenger settlement was covered by insurance or reinsurance, then Clarendon has no business trying to "recoup" these "non-losses" from ARM. As indicated above, a defendant, such as ARM, is surely entitled to discovery to determine what its true liability to plaintiff (Clarendon) might be.

In its opposition, Clarendon points to *Ogden v. Chemung County,* 87 N.Y.2d 81, 637 N.Y.S.2d 670 (1995), for the proposition that recoveries from insurance "are collateral to and shall not mitigate the underlying damage claims." However, *Ogden* is wholly inapplicable to the case at bar. *Ogden* clarified the situations in which a plaintiff seeking recovery for a bodily injury can, or cannot, be forced to ***18** reduce his or her recovery from the tort feasor by the sums that he or she might be able to recover from some other "collateral" source. In *Ogden*. the "collateral source" was a disability pension the plaintiff-victim was entitled to.

Here, although the underlying action was, indeed, a bodily injury case, the actual plaintiff here is *not* the individual who suffered the bodily injury. Instead, the plaintiff is an insurance company which paid a bodily injury claim on behalf of its insured. That insurance carrier, Clarendon, now seeks to shift its loss onto its agent, ARM. However, the exact size of Clarendon's actual loss must be ascertained. To the extent *Ogden* has any bearing on the case at bar, it is for its discussion of the legislative intent designed to avoid a windfall to a plaintiff who is seeking to recover twice: once from a defendant and once from some other "collateral source." *Ogden* explained, approvingly, that the public policy goal was to "eliminate[e] plaintiffs' duplicative recoveries." *Ogden,* 87 N.Y.2d at 88.

Here, Clarendon paid out several millions of dollars to the underlying claimant, Leroy Pittenger. ARM does not seek to have the recovery to Pittenger reduced by any amount. Instead, ARM is seeking to ensure that Clarendon has not already recouped some or all of this amount from some other source. It would truly be an inappropriate windfall to Clarendon if it paid some $4 million to Pittenger and then recovered that amount twice, once from its carriers and once from ARM.

***19** Finally, Clarendon opposes so much of ARM's appeal which challenged the denial of ARM's motion to vacate the Note of Issue. Clarendon's opposition is predicated on the theory that a Note of Issue should not be vacated when it was filed in response to Court directives that acknowledged that there was still discovery outstanding.

In response, ARM notes that at the conference where Clarendon was directed to file the Note of Issue, ARM registered its objection to that directive and clearly indicated that it would move to vacate that Note of Issue.

Moreover, the cases Clarendon cites in opposition to ARM's motion are eminently distinguishable.[6] Clarendon cites these cases for the proposition that a Note of Issue should not be vacated where it was issued in response to a Court

Order, including where the Court Order identified outstanding discovery. However, in each of these cases, the discovery that was "outstanding" was a finite agreed-upon amount. For example in *Smukler v. 12 Lofts Realty, supra,* the Court noted that the trial court had "recognized that further discovery had to be conducted" and that the outstanding discovery had been "list[ed] and schedule[d]." Similarly in *Ireland v. GEICO, supra*, the Court sanctioned ***20** plaintiff for seeking to vacate a Note of Issue since the allegedly outstanding discovery issues "had previously been determined by the court and [plaintiff] did not promptly move to reargue."

Here, in contrast, there was no finite "known universe" of discovery that remained outstanding that all parties agreed to.

In sum, this case cannot be viewed strictly through the narrow blinders of what Clarendon did upon receipt of ARM's coverage analysis in this particular underlying case involving Leroy Pittenger and Kephart Trucking. The reason *why* Clarendon acted as it did when faced with ARM's analysis is key to determining whether Clarendon is correct when it contends, as it does now, that it bears no liability or responsibly for the subject denial to Kephart.

Therefore, Clarendon should be directed to:
* specifically identify (and set forth the rational for) the instances where *Clarendon*: (i) disclaimed coverage when a TPA recommend that coverage be denied; (ii) awarded coverage even though a TPA said that coverage should be denied; (iii) disclaimed coverage when a TPA said that coverage should be awarded; and (iv) awarded coverage when a TPA recommenced that coverage be awarded.

* Set forth when and how *Clarendon* was kept abreast of developments in the law.

* Identify TPAs *used by Clarendon*.

21** ***Conclusion

For all the aforesaid reasons, it is respectfully submitted that the decision of the trial court should be reversed in all respects and ARM should be awarded all of the discovery it seeks and which is necessary to defend itself in this multi-million dollar case.

Footnotes

1 Unless otherwise noted, all references (R- ___), are to the Record on appeal.

2 The *Evans* decision does not state why plaintiff sought that information, or under what provision of the CPLR that information was sought.

3 Plaintiff has never disputed this point and its concession means that Clarendon's role vis-a-vis coverage analysis was the same regardless of the TPA.

4 Although the discovery analysis in *Barkley* was pursuant to FRCP 26(b)(1), *Werner, supra*, noted that FRCP 26(b)(1) was "analogous" to CPLR 3101 (a), the relevant New York discovery statute.

5 ARM notes that Clarendon has still made no attempt to distinguish these cases from the facts at hand or to otherwise argue that they do not stand for the proposition that ARM is entitled to the sought-after discovery.

6 These cases are: *Ireland v. GEICO Corporation,* 2 A.D.3d 917, 768 N.Y.S.2d 508 (3d Dep't 2003); *Sun Plaza Enterprises v. Crown Theatres,* 307 A.D.2d 352, 762 N.Y.S.2d 829 (2d Dep't 2003); *Work-O-Lite Co. Inc. v. Lighting Unlimited,* 198 A.D.2d 144, 604 N.Y.S.2d 734 (1st Dep't 1993); and *Smukler v. 12 Lofts Realty. Inc.,* 178 A.D.2d 125, 576 N.Y.S.2d 862 (1st Dep't 1991).

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